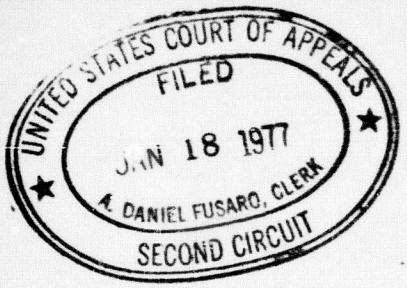
United States Court of Appeals

for the Second Circuit

AMICUS BRIEF



76-7519

To be argued by
LAWRENCE J. MAHONEY

United States Court of Appeals

FOR THE SECOND CIRCUIT

ANTHONY MUNOZ, *Plaintiff-Appellee,*
against
FLOTA MERCANTE GRANCOLOMBIANA, S. A.,
Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York

Brief Amici Curiae

Of American Export Lines, Inc; American President Lines, Ltd.; American Trading Transportation Co., Inc.; Albatross Tankers Corporation; Crowley Maritime Corp.; Farrell Lines Inc.; Hudson Waterways Corp.; Lykes Bros. Steamship Co., Inc.; Manhattan Tankers Corporation; Matson Navigation Company; Moore-McCormack Lines, Inc.; Prudential Lines; Sea-Land Service, Inc.; Sea-Train Lines; States Steamship Company; Transeastern Shipping Corporation; United Maritime Tankers; and United States Lines, In Support of Flota Mercante Grancolombiana, S. A., Defendant-Appellant.

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SUBJECT INDEX

LIST OF AUTHORITIES

CASES

CASES

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

MISCELLANEOUS

NO. 76-7519

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To The Honorable Judges Of Said Court:

STATEMENT OF INTEREST

Amici Curiae consist of eighteen individual American steamship companies whose operations are nationwide.

They are representative of all steamship companies who do business in the United States and therefore share a common exposure to personal injury and death claims by longshoremen and other harbor workers in the United States. They are literally involved in hundreds of lawsuits brought against them seeking damages under the new negligence standard provided for by Congress under the 1972 Amendments to the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C.A. §905(b) (1976 Supp). Your Amici therefore are vitally interested in seeing that the negligence standards formulated by the federal judiciary under the 1972 Amendments are fully consistent with the overall objectives of the Congress—(1) to provide adequate workmen's compensation benefits to meet the needs of the injured employee and his family, (2) to strengthen the stevedore employer's incentive to provide the fullest measure of on-the-job safety by requiring the stevedore employer to bear the economic costs of injuries which are caused by unsafe conditions for which the stevedore is responsible, and (3) to require the vessel to bear the economic costs of unsafe conditions for which the vessel is responsible.

As the negligence standards in cases such as the one presently before the Court are still in the formative stage, your Amici submit this Brief in the hope that it will be helpful to the Court in fashioning a standard that will give full effect to these Congressional objectives.

THE ISSUE

This Court has previously expressly held that land-based principles of negligence are to be applied in determining the standard of care owed by vessels to dock workers subsequent to the 1972 Amendments to the

Longshoremen's Act, 33 U.S.C.A. §901 ff. *Napoli v. Hellenic Lines, Ltd.*, 536 F.2d 505, at 507 (2nd Cir. 1976). The basic issue on this appeal thus becomes:

> Did the vessel breach any duty which it owed to the stevedore and its longshoremen employees which proximately caused the plaintiff's injury?

The evidence in this case clearly establishes that the plaintiff was injured because of a latent defect in the cargo stow which had been created by his expert stevedore employer and which defect in the stow could only be corrected by his expert stevedore employer because of the work rules of the plaintiff's labor union which prohibit the vessel's crew members from engaging in cargo operations aboard vessels in the Port of New York. Additionally, the stevedoring contract between the vessel and the plaintiff's stevedore employer placed the duty to stow the cargo properly and free of any defects, whether latent or patent, on the stevedore and not on the vessel. Thus, vis-a-vis the vessel and stevedore, both the plaintiff's labor union's work rules and the stevedoring contract placed the duty on the stevedore and not the vessel to correct any defects in the stow which had been created by the stevedore during the course of its cargo operations.

Under these circumstances, your Amici respectfully submit the vessel owed no duty to the expert stevedore and its longshoremen employees to inspect, detect and correct any defects in the stow created by the expert stevedore and its longshoremen employees during the course of the cargo operations. Thus, there were no fact issues for determination by the jury and the vessel's motion for a directed verdict should have been granted.

The soundness of this conclusion and that the result it produces fully effectuates the intent of Congress in adopting land-based negligence principles in the 1972 Amendments will now be considered in some detail.

ESSENTIAL BACKGROUND INFORMATION

The 1972 Amendments to the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C.A. §901 ff (hereafter the "Longshoremen's Act" or "the Act"), made three principal changes dealing with liability relating to injuries and deaths to longshoremen and harbor workers, their stevedore employers and the vessels on which they worked. The 1972 Amendments were a compromise between the three—(1) employees (longshoremen and other harbor workers), (2) employers (stevedores, shipyards, etc.), and (3) third parties (shipowners, their vessels, etc.). Each of the three received substantial "benefits" in return for relinquishing certain "rights" they had against one another:

1. Employees received vast improvements in compensation benefits. For example, the maximum weekly compensation rate was increased from $70.00 per week in steps over the first three years to its present figure of $342.54 per week with built-in provisions for it to increase annually as the national average weekly wage might increase, 33 U.S.C.A. §906.[1]

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1. Thus, a covered employee who has an average weekly wage of $514.81 per week ($26,770.12 per year) would be entitled to $342.54 per week ($17,812.08 per year) for total disability, which is the equivalent of an earned income of approximately $21,000 to $22,000 per year before social security taxes, income taxes and union dues are deducted. This increase in the maximum weekly compensation rate payable is only one of many vast improvements in compensation benefits which were made.

The Act's jurisdiction was extended ashore to those employees directly involved in "loading, unloading, repairing, or building" vessels where formerly dockside injuries were covered by state compensation benefits, 33 U.S.C.A. §903(a).

2. In return for the vast improvements in compensation benefits and the extension of the Act's jurisdiction ashore, the rights of covered employees to recover damages from a third party vessel on which they were injured were changed:[2]

   A. The 1972 Amendments eliminated the liability without fault doctrine of unseaworthiness as a basis for the vessel's liability,[3] and

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2. The quotations with respect to legislative history in this Brief are from House Committee Report No. 92-1441 which has been published in full in 1972 U.S. Code Congressional and Administrative News 4698. The principal portion of the Report which is pertinent here is found under the heading of "Elimination of Unseaworthiness Remedy" at pages 4701-4705. Senate Committee Report No. 92-1125 under the same heading in all substantial significant respects is identical to the House Report. While the two Committee Reports are substantially identical in certain areas, they differ to some extent in others. The Senate Subcommittee on Labor of the Committee on Labor & Public Welfare, 92nd Congress, 2d Session, in December, 1972, published a Legislative History of the Longshoremen's & Harbor Workers' Compensation Act Amendments of 1972 (S. 2318, Public Law 92-576) in which both Committee Reports and other legislative history are published. The pertinent portions of the House Committee Report are reproduced as Addendum A, pages 27 to 36 of this Brief. For convenience, when quoting from or citing this portion of the legislative history, we will cite Addendum A, following which we will use the page number from the U.S. Code Congressional and Administrative News. For example, Add. A, p. 1; Adm. News, 4703.

3. "The Committee believes that especially with the vast improvement in compensation benefits which the bill would provide, there is no compelling reason to continue to require vessels to assume what amounts to absolute liability for injuries which occur to longshoremen or other workers covered under the Act who are injured while working on those vessels. In reaching this conclusion, the Committee has

B. **Replaced maritime negligence as a basis for the vessel's liability with a cause of action for negligence in which the vessel is not to be held liable as a third party unless its negligence is such as would render a land-based third party in non-maritime pursuits liable under similar circumstances.**[4]

3. In return for the elimination of the liability without fault unseaworthiness remedy and the replacement of maritime negligence with land-based negligence law, the vessel was deprived of its implied contractual rights to indemnity from the employer under *Ryan*,[5] and written contracts agreeing to indemnify vessels for damages caused by the vessel's own negligence were declared to be void.[6]

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noted that the seaworthiness concept was developed by the courts to protect seamen from the extreme hazards incident to their employment which frequently requires long sea voyages and duties of obedience to orders not generally required of other workers. The rationale which justifies holding the vessel absolutely liable to seamen if the vessel is unseaworthy does not apply with equal force to longshoremen and other non-seamen working on board a vessel while it is in port." Add. A, p. 31; Adm. News, 4702.

4. "The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as "unseaworthiness," "non-delegable duty," or the like. Add. A, p. 32; Adm. News, 4703.

5. *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124, 100 L.Ed. 133, 76 S.Ct. 232 (1956).

6. "The Committee also believes that the doctrine of the *Ryan* case, which permits the vessel to recover the damages for which it is liable to an injured worker where it can show that the stevedore breaches an express or implied warranty of workmanlike performance

THESE COMPROMISES WERE DESIGNED TO PROMOTE SAFETY

In effectuating this compromise between the three parties — longshoremen-stevedore-vessel — however, Congress also considered of equal, if not greater, importance its desire to provide the maximum possible incentive to the stevedore and the vessel for each to promote on-the-job safety. The legislative history in both the House and Senate Committee Reports reflects this quite clearly:

> "It is important to note that adequate workmen's compensation benefits are not only essential to meeting the needs of the injured employee and his family, but by assuring that the employer (stevedore) bears the costs of unsafe conditions, serves to strengthen the employer's (stevedore's) incentive to provide the fullest measure of on-the-job safety." (Emphasis and parenthetical expression supplied) Add. A, p. 28, Adm. News 4699.[7]
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is no longer appropriate if the vessel's liability is no longer to be absolute, as it essentially is under the seaworthiness doctrine. Since the vessel's liability is to be based on its own negligence, and the vessel will no longer be liable under the seaworthiness doctrine for injuries which are really the fault of the stevedore, there is no longer any necessity for permitting the vessel to recover the damages for which it is liable to the injured worker from the stevedore or other employer of the worker.

Furthermore, unless such hold-harmless, indemnity or contribution agreements are prohibited as a matter of public policy, vessels by their superior economic strength could circumvent and nullify the provisions of Section 5 of the Act by requiring indemnification from a covered employer for employee injuries." Add. A, p. 34; Adm. News, 4704.

7. ". . . The Committee rejected the proposal, originally advanced by the industry, that vessels should be treated as joint employers of longshoremen or other persons covered under this Act working on-board such vessels. This would result in restricting the vessel's

"The Committee believes that especially with the vast improvement in compensation benefits which the bill would provide, there is no compelling reason to continue to require vessels to assume what amounts to absolute liability for injuries which occur to longshoremen or other workers covered under the Act who are injured while working on those vessels. In reaching this conclusion, the Committee has noted that the seaworthiness concept was developed by the courts to protect seamen from the extreme hazards incident to their employment which frequently requires long sea voyages and duties of obedience to orders not generally required of other workers. The rationale which justifies holding the vessel absolutely liable to seamen if the vessel is unseaworthy does not apply with equal force to longshoremen and other non-seamen working onboard a vessel while it is in port." (Emphasis supplied) Add. A, p. 31, Adm. News 4703.

* * *

"Accordingly, the Committee has concluded that, given the improvement in compensation benefits which this bill would provide, it would be fairer to all concerned and fully consistent with the objective of protecting the health and safety of employees who work onboard vessels for the liability of vessels as third parties to be predicated on negligence rather than the no-fault concept of seaworthiness. This would place vessels in the same position, insofar

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liability in all cases to the compensation and other benefit payable under the Act. (Note: Obviously, had this not been rejected, most of the shipowner's incentive for safety would have been eliminated.) The Committee believes that where a longshoreman or other worker covered under this Act is injured through the fault of the vessel, the vessel should be liable for damages as a third party, just as land based third parties in non-maritime pursuits are liable for damages when, through their fault, a worker is injured." (Parenthetical expression added). Add. A, p. 28, Adm. News 4702.

> as third party liability is concerned, as land based third parties in non-maritime pursuits." (Emphasis supplied) Add. A, p. 32, Adm. News 4703.
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> ". . . The Committee expects to see further progress in reducing injuries and stands ready to immediately reexamine the whole third party suit question if it appears that the changes made in present law by this bill have affected progress in improving occupational health and safety." Add. A, p. 36, Adm. News 4705.

As these quotations from the legislative history clearly reflect, Congress intended to provide this safety incentive to both the stevedore and the vessel by requiring the economic costs of a longshoreman's injury to be borne by the party whose real fault caused the injury.

This was a recognition by the Congress that in today's modern world, with all of its technological developments in the handling of cargo onto and off of vessels, the need for an expert stevedoring company which possesses all of the necessary gear and equipment to load or discharge a vessel with reasonable safety is not open to question. With almost every kind of cargo, sophisticated cargo handling equipment both ashore and aboard vessels is necessary, and gone are the days when the vessel could carry all of the equipment necessary to load or discharge itself on its foreign voyages.[8]

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8. The expertise of the stevedore has not been changed by the 1972 Amendments and it was colorfully described in what is perhaps the most quoted case on the stevedore's expertise as follows:

> "In almost every instance, when a stevedoring contractor commences the work of loading or unloading a seagoing vessel, the ship has arrived in port only a few hours before. She may have

Congress thus recognized that a third party action against a vessel was needed only to protect independent contracting stevedores and their employees from the vessel's own negligence and not from the negligence of the stevedore or its employees. Congress made this fact absolutely clear in its Committee Reports when it affirmatively stated: "The vessel will not be chargeable with the negligence of the stevedore or employees of the stevedore." Add. A, p. 33, Adm. News 4704.

Indeed, the statute itself affirmatively so states when the longshoremen are hired directly by the vessel rather than through an independent contractor:

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been at sea for weeks or months. Almost always, she has ridden some heavy seas. * * * Almost surely she will have been serviced by stevedores of varying degrees of competency in other parts throughout the world.

* * *

"It is reasonable to expect, then, that many things may be wrong with a freighter and her equipment and appliances when she arrives in port; that she may well be a place of danger even as she docks. And all of these lurking dangers may be due entirely to the hazards of the ship's service.

"The stevedoring contractor knows that the ship has been at sea; that she may be in many respects dangerous to the life and limb of an unskilled person; that if a condition is found which is unsafe for the professional longshoreman, as a rule the contractor can remedy it at the expense of the shipowner; that if the stevedoring operations are thereby delayed, the shipowner normally must pay for standby time.

"Stevedoring contractors hold themselves out as being trained and equipped to cope with these conditions and these dangers. To this end, the stevedoring contractor is usually given full use and charge of the ship's loading and unloading equipment and appliances and the cargo hatches and holds. So it is that the stevedoring contractor cannot reasonably expect, and does not expect, to board a vessel which in all respects, as to equipment and appliances as well as hull, is in a seaworthy condition, or even in a reasonably safe condition." *Hugev v. De npskisaktieselskabet International*, 170 F.Supp. 601, at 610 (D.C. Cal. 1959) *aff'd per curiam* 274 F.2d 875 (9 Cir. 1960).

> " . . . If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. . . . " U.S.C.A. §905 (b).

Congress emphasized this approach because of its firm belief that if the party who was responsible for not correcting an unsafe condition was made to bear the cost of any injuries caused by it, this would serve as a strong incentive to that party to provide the best possible on-the-job safety procedures.[9]

Undoubtedly Congress was concerned about each party bearing the costs of injuries resulting from unsafe conditions for which it was respectively responsible, because of the lack of any real economic incentive in the shipowner to furnish a seaworthy vessel prior to the 1972

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9. One of the first Courts to write on the new standard of negligence, a panel of three District Judges in the Eastern District of Pennsylvania convened for this purpose, stated:

> "* * * It is clear, however, that Congress decided that the primary duty to provide a safe place to work is in the stevedore. The substantial increase in compensation benefits provided by the amendments was thought to be an incentive to the stevedore to provide a safe place to work. As stated in the Senate Report:
>
> "'It is important to note that adequate workmen's compensation benefits are not only essential to meeting the needs of the injured employee and his family, but, by assuring that the employer bears the costs of unsafe conditions, serve to strengthen the employer's incentive to provide the fullest measure of on-the-job safety.' * * *" *Lucas v. "Brinknes" Schiffahrts Ges.*, 379 F.Supp. 759, at 768 (E.D. Pa. 1974)

Elsewhere in the Senate Report the Committee indicates that a reduction in the injury frequency rate clearly would require not only vigorous enforcement of safety regulations, but also "a workmen's compensation system which maximizes industry's motivation to bring about such an improvement." (Senate Report No. 92-1125, 92nd Cong. 2d Sess. (1972), p. 2) *Hite v. Maritime Overseas Corp.*, 375 F.Supp. 233 (E.D. Tex. 1974) also recognized this Congressional safety purpose.

Amendments. Prior to the 1972 Amendments, a shipowner could bring into port a vessel with any and all types of unsafe or unseaworthy conditions in the cargo or the vessel's equipment and turn it over to the stevedoring company to use in stevedoring the vessel. Once the stevedoring company had knowledge of any unsafe condition aboard the vessel, unless it refused to work the vessel, the stevedore was liable to indemnify the shipowner for any damages awarded to an injured longshoreman as a result of the unsafe condition under the *Ryan* doctrine with which this Court is fully familiar.[10] Thus, even when the shipowner both created the unsafe condition and had the duty to correct it, in most instances the stevedore would have to bear the costs occassioned by the unsafe condition. If no one was injured until the stevedore had knowledge of the condition, the shipowner had to bear none of the costs of its own unsafe conditions and therefore had no real incentive to correct them even when it was its obligation to do so.

If this Court adopts a rule of law in this case that the vessel owed the stevedore and its employees a duty to inspect, detect and correct the defect in the stow created by the stevedore and its employees, it will effectively destroy most of the safety incentives Congress intended to give to the independent contracting stevedore under the

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10. *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124 (1956). This was in keeping with the policy expressed by the Supreme Court of the United States in *Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315 (1964), where it said:

> "[L]iability should fall upon the party best situated to adopt preventative measures and thereby to reduce the likelihood of injury. Where, as here, injury-producing and defective equipment is under the supervision and control of the stevedore, the shipowner is powerless to minimize the risk; the stevedore is not." 376 U.S. at 324.

1972 Amendments. Any such rule would mean that once a vessel knows or ought to know that a stevedore has created an unsafe condition during its cargo operations, and even though the stevedore has the obligation to correct that condition, the vessel is liable for any injuries sustained by the stevedore's employees. If such a rule is adopted, once the vessel has knowledge of the unsafe condition, the stevedore has no incentive to correct it for it would know the vessel would have to bear the costs of any injuries which might occur.

Thus, any such rule of law would simply replace the unrealistic rule of law arising out of the *Ryan* indemnity cases which substantially eliminated any incentive for the vessel to adopt safe practices, with an equally unrealistic rule of law which would substantially destroy any incentive which the stevedoring company might have to adopt safe work practices.

This is obviously not what Congress intended. Congress made it perfectly clear that it intended for the vessel and the stevedore to each bear the economic costs of unsafe conditions for which they were responsible. This is indeed the only way that Congress had to try to insure that both the vessel and the stevedore would approach stevedoring operations with a view to making them as safe as possible. To the extent the courts adopt any rules of law which will reduce the cost of injuries to the party who has the obligation to correct an unsafe condition of which it has knowledge, they will thwart this Congressional purpose.

It is apparent that the equitable balance intended by the Congress and the Courts can be achieved only by a strict construction of the shipowner's duty to injured long-

shoremen. If the well recognized principles of land-based law are applied, a fair distribution of liabilities will be accomplished, as intended by Congress. On the other hand, imposition of liability upon the shipowner in cases such as this will unduly tip the scales in favor of the longshoremen and their stevedore employers and against the vessel owners.

The expansion of the shipowner's responsibilities in this manner would bestow unintended benefits not only upon the longshoremen, but to even a greater extent upon the stevedore/employer. Although the 1972 Amendments provide for greatly increased compensation payments by the stevedore to the longshoremen a judgment in favor of the longshoremen against the shipowner results in a complete recovery by the stevedore of all its compensation payments. See *Landon v. Lief Hoegh and Co., Inc.*, 521 F.2d 756 (2nd Cir. 1975).

The 1972 Amendments insulate the stevedore from an indemnity claim by the shipowner, even where the stevedore's negligence caused the accident. If shipowners are still to be held responsible to longshoremen for conditions arising during the stevedoring operations, the stevedore employer will receive the added benefit of recouping the compensation payments made to the injured longshoremen. This windfall recovery provides little or no incentive for the stevedore to make certain that its work is performed in the safest possible manner. The increased compensation payments to injured employees will scarcely deter a stevedore from careless operating procedures if the shipowners are to be held responsible for the injuries, with the result that the compensation payments are repaid in full to the stevedore employer. In effect the stevedore

is thereby rewarded for its careless operation. Obviously this anomaly of rewarding a wrongdoer was not the result intended by Congress.

LAND BASED PRINCIPLES

Bearing this safety incentive purpose of Congress in mind, we turn to a consideration of the applicable land based concepts on which Congress intended the issue of the vessel's negligence to be based. No claim is made by the Plaintiff that the vessel in any way breached its initial duty under land based negligence law to use reasonable care to make the premises reasonably safe for the use of its independent contracting stevedore or to give the independent contracting stevedore adequate and timely warning of dangers known to the vessel but unknown to the independent contractor.[11] It is undisputed that the vessel's cargo hold was in a reasonably safe condition for the stevedore's cargo operation, and that the stevedore alone carried out all of the cargo operations in the No. 3 hold prior to Plaintiff's injury. The condition which produced the injury to the Plaintiff longshoreman (latent defect in the cargo stow) was created aboard the vessel solely by the stevedore.

The question in this case thus becomes:

> To carry out the Congressional mandate "to provide the fullest measure of on-the-job safety" by requiring the party really at fault to bear the economic costs of plaintiff's injury, who should have the obligation to protect the independent contracting stevedore (and

11. Cases which are illustrative of the application of this rule in the vast majority of the states which have had occasion to apply it are set out in Addendum B, *infra*, pp. 37 to 3º.

> thus its employees like plaintiff) from conditions created solely by the stevedore during its cargo operations?

A well established principle of land based law provides the answer to this question and may be succinctly stated as follows:

> The owner or occupier of premises who retains no more right of control over the independent contractor's work than necessary to secure satisfactory completion of the work, owes no duty to protect the independent contractor or its employees from dangerous conditions arising during the performance of the work.[12]

Thus, there can be only one answer to the foregoing question. The independent contracting stevedore, and it alone (vis-a-vis the vessel) should have the obligation to both discover and correct this condition, not only because the stevedore had negligently created it, but because it alone would be permitted to correct it by the union work rules and because it had the duty to do so under the stevedoring contract.

Pursuant to these land based negligence principles, what rule of law can be promulgated which will effectuate the Congressional purpose to give both the vessel and the stevedore the strongest possible incentives to make the stevedoring operations as safe as possible? Your Amici respectfully submit that only a rule of law which imposes the economic costs on the party (vessel or stevedore) who

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12. Cases which are illustrative of the application of this rule in the vast majority of the states who have had occasion to apply it are set out in Addendum C, *infra*, pp. 40 to 41.

has the duty to correct the unsafe condition which causes the injury will give full effect to this Congressional safety mandate. In this case, vis-a-vis the vessel and the stevedore, the stevedore had the obligation to correct the unsafe condition, not only because the stevedore negligently created it, but because all such cargo operations are required by contracts with the longshoremen's labor unions to be done by longshoremen and the vessel's crew is not permitted to engage in such cargo handling operations in the United States. As the stevedore had the obligation to correct the unsafe condition, the vessel had no duty to do so and therefore was not negligent and not liable to the plaintiff.

While only a latent defective condition in the stow of which the shipowner had no knowledge is involved in this case, this same rule of law would have to be applied even if the vessel had knowledge of the defect in the stow, for the stevedore (vis-a-vis the shipowner) would still have the obligation to correct the condition and therefore should bear the economic costs of any injuries caused by it. But how would such a rule work where the vessel has the duty to correct the condition? Assume that both the vessel and the stevedore have knowledge of an unsafe condition, such as oil spilled on the vessel's main deck, for example.

The factual issue of who owed the duty to correct the unsafe condition would include such related issues as whether the presence of oil was created by the operations of the stevedores or by the vessel's crew, which party maintained control of the area, and, whether that party knew of the presence of oil and had sufficient opportunity to either correct it or take appropriate interim steps to alleviate its hazards. The economic cost of any

injuries caused by the unsafe condition would then be borne by the party so responsible.

It is submitted that such fact issues as above stated would be few and far between, because the respective duties and responsibilities to correct unsafe conditions vis-a-vis a vessel and its independent contracting stevedore are well understood both by contract and actual practice. In the instant case, no such fact issue existed, since the stevedore clearly created the unsafe condition, maintained sole control of the area and the cargo operations within it, was the only party authorized and obliged to take appropriate corrective steps, and thus should be the party to bear the economic costs of the injuries sustained by the plaintiff.

SUCH A RULE ALSO GIVES FULL EFFECT TO COMPARATIVE NEGLIGENCE AND NO ASSUMPTION OF RISK

If this rule of law—that the party who has the obligation to correct the unsafe condition shall bear the economic cost of any injuries resulting from it—is adopted, will the Courts also be able to comply with the Congressional directive in the Committee Reports that the admiralty doctrines of comparative negligence and no assumption of the risk are to be applied in negligence actions against vessels under the 1972 Amendments?[13] Quite obviously so:

1. In the oil on the vessel's main deck example used above, if we assumed the vessel is found to have negligently failed to remove the oil which had been spilled on the deck by a member of the vessel's crew, the vessel could not defeat the longshoreman's action by asserting the defense that he had

13. Add. A, p. 36, Adm. News 4705.

assumed the risk. However, if the injured longshoreman had knowledge of the oil on the deck and could have avoided it by exercising reasonable care for his own safety, his damages would be reduced by the application of the admiralty doctrine of comparative negligence.

2. In the case before this Court in which the stevedore had the obligation to correct the unsafe condition in the stow which it had created and the vessel is therefore not liable to the Plaintiff, it is not the Plaintiff who assumes the risk of his own injury, but, as Congress intended, it is his stevedoring company employer who assumes and bears the cost of his injuries by paying him workmen's compensation benefits—benefits which Congress placed at an unprecedented high level for the express purpose of giving the stevedore the maximum possible incentive to meet its obligation to correct any unsafe condition for which it was responsible.[14]

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14. Of course, as Congress stated, these high compensation benefits are also designed to meet the needs of longshoremen and their families. In many instances the Longshoremen's Act benefits will exceed any damages which the longshoreman might recover from the vessel and especially so if the longshoreman is negligent and his damages reduced by the comparative negligence doctrine. At this time, September, 1976, the maximum weekly compensation rate is $342.54 which would total $17,812.08 for a year. If totally and permanently disabled, this is paid for the balance of the longshoreman's life, with annual increases in proportion to any increase in the national average weekly wage. 33 U.S.C.A. §910(f). For a 40-year old man who would have a life expectancy of approximately 31 years, at the statutory discount rate this would have a tax free present value of $313,287 without considering any potential annual increases. If the longshoreman dies, whether from the injury or unrelated causes, a death benefit is paid to the widow for the balance of her life which would require an annual payment to her of approximately $13,359.06. 33 U.S.C.A. §909. Lifetime benefits are also provided for permanent partial disabilities to the body as a

By adopting the rule suggested by your Amici—that the party who has the obligation to correct the unsafe condition should bear the economic cost of any injuries resulting from it—in this case the Court would give full effect to the Congressional safety purpose by requiring the stevedore who was really at fault (and not the individual longshoreman) to assume or bear the risk of the unsafe condition which caused the injury. When the compensation benefits under the act were grossly inadequate as they were prior to the 1972 Amendments (a maximum weekly compensation rate of $70.00 per week and a maximum limitation of only $24,000.00 on all claims other than total permanent and death cases) it might well have been said about many cases that to deny recovery on a liability without fault basis would make the longshoreman assume or bear the risk of injury; but with the vast improvement in these benefits (a maximum weekly benefit at this time of $342.54 per week or $17.812.08 per year, with yearly escalations in the future and with no limitation on the amount of compensation payable whether for partial or total disability or death) it can truly be said that denying a longshoreman a right to recover damages from the vessel when only his stevedore-employer is really at fault makes the stevedoring company bear or assume the risk of his injury. Such a rule would make fully effective the Congressional desire to set up a system which "would be fairer to all concerned and fully consistent with the objective of protecting the health and safety of employees who work onboard vessels." Add. A, p. 32, Adm. News 4703.

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whole without any monetary maximum, together with unlimited lifetime medical benefits as well. Thus whether the vessel or the stevedore is made to bear the economic cost, the longshoreman and his family will be adequately compensated for his injuries and they will never be called upon to assume the risk even when the longshoreman's own negligence is the sole cause of his injury.

SOME CASES DECIDED UNDER THE 1972 AMENDMENTS

A consideration of some of the cases which have applied land based negligence law under the 1972 Amendments will demonstrate how the Congressional safety purpose can be made effective, and will illustrate how the rule of law suggested by your Amici would be applied to effectuate this purpose.

BESS v. AGOMAR LINE, 518 F.2d 738 (4 Cir. 1975)

The longshoreman contended that he was injured because plywood dunnage should have been provided so that the longshoremen would have a better working surface on top of some baled cargo. A request was made of the stevedore's hatch tender but no plywood dunnage was provided. As there was no evidence that the vessel had any duty to furnish dunnage, the Court held that the vessel was not liable for the longshoreman's injury. The obligation to use dunnage to provide proper work surface and the work necessary to put the dunnage in place was clearly the obligation of the stevedore insofar as the condition of the cargo in the vessel's hold was concerned. As the stevedore was the party really at fault, making it bear the economic costs of the injury fulfilled the Congressional safety purpose. The rule of law suggested by your Amici would produce the same result, for it was the stevedore's obligation to furnish and use any dunnage needed to eliminate any unsafe condition.

HITE v. MARITIME OVERSEAS CORPORATION, 380 F.Supp. 222 (E.D. Tex. 1974)

A ship repairman was injured as a result of a defective light cord which had been furnished by ship repairer-

employer. In directing a verdict for the vessel, the Court held that it could not be found liable because the electric drop cord that shocked the plaintiff was in an open and obviously defective condition which was well known to him and to his employer, and the vessel therefore had no duty to warn him of the condition. The Congressional safety purpose was furthered as the ship repairman's employer was made to bear the economic costs of the injury resulting from defective equipment furnished by it and which it (vis-a-vis the vessel) had the obligation to correct. As the ship repairer-employer had the obligation to correct the unsafe condition, your Amici's suggested rule would produce the same holding on the *Hite* facts.

ROBINSON v. DIXIE MACHINE WELDING & METAL WORKS, INC., ET AL, ____F.Supp.____, 1975 A.M.C. 2114 (E.D. La. 1975)

The Plaintiff ship repairman sought damages for a hearing loss injury sustained while removing rust and scale from the vessel. All of the tools and equipment were furnished by the ship repairman's employer but the plaintiff contended the vessel was negligent in failing to see that adequate precautions had been taken by his employer to provide him a safe place in which to work. The Court held that the vessel was not negligent and therefore not liable to the ship repairer because "it was not the vessel owner's duty to supervise the manner in which plaintiff's employer, Dixie Machine Welding & Metal Works, performed the ship repairing work for which it had contracted." As any fault in the case was attributable solely to the ship repairman's employer and

not the vessel, the Congressional safety purpose was fully served by placing the economic costs on the employer. The rule of law your Amici suggest would reach the same result, as the obligation to correct or remedy any unsafe condition which might have contributed to the plaintiff's hearing loss was solely the obligation of his ship repairer-employer.

HUBBARD v. GREAT PACIFIC CO., MONROVIA, 404 F.Supp. 1242 (D.C. Ore. 1975)

This longshoreman was injured as he was walking across the top of a vessel's cargo hatch when he stepped onto an overhanging portion of the tarpaulin covering the hatch and fell some five feet to the deck below. The longshoremen had put the hatch tarpaulins down on top of the hatch covers as normally done to permit the vessel's crew to batten the tarpaulins down. The vessel's crew started battening down the tarpaulins but left them in an unfinished condition with the overhang onto which the longshoreman stepped causing his fall. In this case the vessel was found liable because the unsafe condition had been created by the vessel's crew and the vessel (vis-a-vis the stevedore) had the obligation to correct the unsafe condition. By making the vessel bear the economic costs of this longshoreman's injury, the Court gave full effect to the Congressional safety purpose. Applying the rule of law your Amici suggest would reach the same result as the vessel not only created the unsafe condition but had the obligation to correct.

FEDISON v. THE VESSEL WISLICA, 382 F.Supp. 4 (E.D. La. 1974)

This longshoreman was injured when he fell into a crevice or gap between cargo crates on top of which he

was attempting to roll or stow a 600 lb. bale of cotton. The Court found that the vessel was not negligent on the ground that the vessel owes no duty to warn the stevedore of a defect or danger which is known to him or which is as well known to the stevedore as to the vessel, or which is obvious or which should be observed by the stevedore in the exercise of ordinary care, and for the further reason that it was the stevedore's duty to discover and correct dangerous conditions such as the holes in the stow which often develop between crates of cargo. The Court thus placed the economic costs of this longshoreman's injury on the stevedore. Since the stevedore (vis-a-vis the vessel) had the obligation to correct the unsafe condition in the stow of which both the stevedore and the vessel had knowledge, the same result is reached if your Amici's suggested rule is applied.

CITIZEN v. M/V TRITON,
384 F.Supp. 198 (E.D. Tex. 1974)

This longshoreman was injured when he stepped into an open space between bags of flour in the vessel's hold which had been loaded in a previous port by his stevedore employer. The plaintiff and other longshoremen had been working in the hold for over six hours prior to his injury and the condition of the stow including the open spaces between the bags of flour were open and obvious conditions. In exonerating the vessel the Court found that the vessel could not be negligent for a breach by the stevedore of its "duty to discover and remedy a dangerous condition caused by the space between the bags of flour as stowed (which) was clearly the responsibility of the stevedore which had control of the work being done in the hold * * *." 384 F. Supp. at 201. The Congressional safety

purpose was effectively accomplished in this case as the stevedore had to bear the economic costs of the plaintiff's injury because it created the dangerous condition and had the obligation to correct it. Application of the rule of law your Amici suggest would result in the same cost allocation, as it was the obligation of the stevedore (vis-a-vis the vessel) to correct the unsafe condition which it had created at a previous port and which caused the injury.

RAMIREZ v. TOKO KAIUN K.K.,
385 F.Supp. 644 (N.D. Cal. 1974)

Three longshoremen were injured when a suspended load of pipe fell out of a cargo bridle, with a pipe landing on one longshoreman's foot and one of the bridle hooks hitting another longshoreman in the chest. Allegedly if the stevedore had used dunnage in a certain way or if the stevedore had not removed some safety clips from the bridle being used to unload the pipe the accident would not have occurred. The Court found that the stevedore having determined the method by which the cargo was to be unloaded and having elected not to use dunnage and to remove the safety clips, the vessel was not liable to the longshoreman although the stevedore had been discharging the cargo in this manner for approximately 5-½ hours prior to the accident. The Court's decision fully served the Congressional safety purpose by putting the economic loss of this injury on the stevedore whose real fault caused it. Similarly, the rule of law suggested by your Amici would produce the same result since the stevedore (vis-a-vis the vessel) had the obligation to correct the unsafe conditions which the stevedore itself had created

CONCLUSION

In changing the rights of all three of the parties in cases such as this by its 1972 Amendments to the Longshoremen's Act, Congress clearly intended that the new uniform federal law of negligence which the federal judiciary is to formulate is to be made fair to all concerned—longshoremen-stevedore-vessel—and fully consistent with the Congressional objective of protecting the health and safety of employees who work aboard vessels by placing the economic costs of any injury which is "really the fault of the stevedore" on the stevedore to strengthen its "incentive to provide the fullest measure of on-the-job safety." Conversely, where the injury is really the fault of the vessel, it is only fair for it to bear the economic costs for the same reason.

Your Amici respectfully submit that if these Congressional objectives are to be met, at the very least a vessel should not have to bear the economic costs of an injury such as the one involved in this case which was caused by a condition negligently created by the stevedore and which condition the stevedore alone would be permitted to and had the duty to correct. A contrary result is not only unfair, but thwarts completely the Congressional safety objectives of the 1972 Amendments.

Respectfully submitted,

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ADDENDUM A

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AMENDMENTS OF 1972

P.L. 92-576, see page 1452

Senate Report (Labor and Public Welfare Committee) No. 92-1125, Sept. 14, 1972 [To accompany S. 2318]

House Report (Education and Labor Committee) No. 92-1441, Sept. 25, 1972 [To accompany H.R. 12006]

Cong. Record Vol. 118 (1972)

DATES OF CONSIDERATION AND PASSAGE

Senate September 14, October 14, 1972

House October 14, 1972

The House Report is set out.

HOUSE REPORT NO. 92-1441

The Committee on Education and Labor, to whom was referred the bill (H.R. 12006) to amend the Longshoremen's and Harbor Workers' Compensation Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

PURPOSE AND BACKGROUND OF LEGISLATION

Amendments to the Longshoremen's and Harbor Workers' Compensation Act are long overdue. This Act has not been amended since 1961. In that year, the maximum

benefit under the Act was set at $70 a week. Today, the average longshoreman's or ship repairman's wage is over $200 a week in some ports. In order to provide adequate income replacement for disabled workers covered under this law a substantial increase in benefits is needed. Although employer groups indicated their willingness to increase worker benefits, they sought a modification of a long line of Supreme Court rulings. These decisions ruled that a shipowner was liable under the doctrine of seaworthiness, for damages caused by any injury regardless of fault. In addition, shipping companies generally have succeeded in recovering the damages for which they are held liable to injured longshoremen from the stevedore's employer on theories of expressed or implied warranty, thereby transferring their liability to the actual employer of the longshoremen.

It is important to note that adequate workmen's compensation benefits are not only essential to meeting the needs of the injured employee and his family, but, by assuring that the employer bears the cost of unsafe conditions, serves to strengthen the employer's incentive to provide the fullest measure of on-the-job safety.

In considering H.R. 12006 the Committee has also given the most careful consideration to the recommendations of the National Commission on State Workmen's Compensation Laws contained in its report issued on July 31, 1972.

* * *

ELIMINATION OF UNSEAWORTHINESS REMEDY

One of the most controversial and difficult issues which the Committee has been required to resolve in connection

with this bill concerns the liability of vessels, as third parties, to pay damages to longshoremen who are injured while engaged in stevedoring operations. The Committee rejected the proposal, originally advanced by the industry, that vessels should be treated as joint employers of longshoremen or other persons covered under this Act working on board such vessels. This would result in restricting the vessel's liability in all cases to the compensation and other benefits payable under the Act. The Committee believes that where a longshoreman or other worker covered under this Act is injured through the fault of the vessel, the vessel should be liable for damages as a third party, just as land-based third parties in non-maritime pursuits are liable for damages when, through their fault, a worker is injured.

The Committee also rejected the thesis that a vessel should be liable without regard to its fault for injuries sustained by employees covered under this Act while working on board the vessel. Vessels have been held to what amounts to such absolute liability by decisions of the Supreme Court, commencing with *Seas Shipping Co. v. Sieracki*, 328 U.S. 25[1] (1946) which held that the traditional seamen's remedy based on the breach of the vessel's absolute, nondelegable duty to provide a seaworthy vessel was also available to longshoremen and others who performed work on the vessel which by tradition has been performed by seamen. Under the *Sieracki* case, vessels are liable, as third parties, for injuries suffered by longshoremen as a result of "unseaworthy" conditions even though the unseaworthiness was caused, created, or brought into play by the stevedore (or an employee of the stevedore) rather than the vessel or any

1. 66 S.Ct. 872, 90 L.Ed. 1099.

member of its crew. For example, under present law, if a member of a longshore gang spills grease on the deck of a vessel and a longshoreman slips and falls on the grease a few moments later, the vessel is liable to pay damages for the resulting injuries, even though no member of the crew was responsible for creating the unseaworthy condition or was even aware of it. Furthermore, in the example given above, under the Supreme Court's decision in *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124[2] (1956), the vessel may recover the damages for which it is liable to the injured longshoreman from the stevedore which employed the longshoreman on the theory that the stevedore has breached an express or implied warranty of workmanlike performance to the vessel. The end result is that, despite the provision in the Act which limits an employer's liability to the compensation and medical benefits provided in the Act, a stevedore-employer is indirectly liable for damages to an injured longshoreman who utilizes the technique of suing the vessel under the unseaworthiness doctrine.

The Committee heard testimony that the number of third-party actions brought under the *Sieracki* and *Ryan* line of decisions has increased substantially in recent years and that much of the financial resources which could better be utilized to pay improved compensation benefits were now being spent to defray litigation costs. Industry witnesses testified that despite the fact that since 1961 injury frequency rates have decreased in the industry, and maximum benefits payable under the Act have remained constant, the cost of compensation insurance for longshoremen has increased substantially because of the

2. 76 S.Ct. 232, 100 L.Ed. 133.

increased number of third party cases and legal expenses and higher recoveries in such cases. The Committee also heard testimony that in some cases workers were being encouraged not to file claims for compensation or to delay their return to work in the hope of increasing their possible recovery in a third party action. The Committee's attention was also called to the decision in 1966 of the United States district court in Philadelphia concerning the impact of third party claims involving injured longshoremen on the backlog of personal injury cases in that court.

The Committee also has taken note of the inescapable fact that the controversy over third party claims by longshoremen has had political ramifications which have resulted in forestalling any improvements in the present Act for over twelve years.

The Committee believes that especially with the vast improvement in compensation benefits which the bill would provide, there is no compelling reason to continue to require vessels to assume what amounts to absolute liability for injuries which occur to longshoremen or other workers covered under the Act who are injured while working on those vessels. In reaching this conclusion, the Committee has noted that the seaworthiness concept was developed by the courts to protect seamen from the extreme hazards incident to their employment which frequently requires long sea voyages and duties of obedience to orders not generally required of other workers. The rationale which justifies holding the vessel absolutely liable to seamen if the vessel is unseaworthy does not apply with equal force to longshoremen and other nonseamen working on board a vessel while it is in port.

Accordingly, the Committee has concluded that, given the improvement in compensation benefits which this bill would provide, it would be fairer to all concerned and fully consistent with the objective of protecting the health and safety of employees who work on board vessels for the liability of vessels as third parties to be predicated on negligence, rather than the no-fault concept of seaworthiness. This would place vessels in the same position, insofar as third party liability is concerned, as land-based third parties in non-maritime pursuits.

The purpose of the amendments is to place an employee injured aboard a vessel in the same position he would be if he were injured in non-maritime employment ashore, insofar as bringing a third party damage action is concerned, and not to endow him with any special maritime theory of liability or cause of action under whatever judicial nomenclature it may be called, such as "unseaworthiness", "non-delegable duty", or the like.

Persons to whom compensation is payable under the Act retain the right to recover damages for negligence against the vessel, but under these amendments they cannot bring a damage action under the judicially-enacted doctrine of unseaworthiness. Thus a vessel shall not be liable in damages for acts or omissions of stevedores or employees of stevedores subject to this Act. *Crumedy v. The J.H. Fisser,* 358 U.S. 423,[3] *Albanese v. Matts,* 382 U.S. 283,[4] *Skibinski v. Waterman SS Corp.,* 330 F.2d 539; for the manner or method in which stevedores or employees of stevedores subject to this Act perform their work, *A.N.G. Stevedores v. Ellerman Lines,*

3. 79 S.Ct. 445, 3 L.Ed.2d 413.

4. 86 S.Ct. 429, 15 L.Ed.2d 327.

369 U.S. 355,[5] *Blassingill v. Waterman SS Corp.*, 336 F.2d 367; for gear or equipment of stevedores or employees of stevedores subject to this Act whether used aboard ship, or ashore, *Alaska SS Co. v. Peterson*, 347 U.S. 396,[6] *Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315,[7] or for other categories of unseaworthiness which have been judicially established. This listing of cases is not intended to reflect a judgment as to whether recovery on a particular factual setting could have been predicated on the vessel's negligence.

Permitting actions against the vessel based on negligence will meet the objective of encouraging safety because the vessel will still be required to exercise the same care as a land-based person in providing a safe place to work. Thus, nothing in this bill is intended to derogate from the vessel's responsibility to take appropriate corrective action where it knows or should have known about a dangerous condition.

So, for example, where a longshoreman slips on an oil spill on a vessel's deck and is injured, the proposed amendments to Section 5 would still permit an action against the vessel for negligence. To recover he must establish that: 1) the vessel put the foreign substance on the deck, or knew that it was there, and willfully or negligently failed to remove it; or 2) the foreign substance had been on the deck for such a period of time that it should have been discovered and removed by the vessel in the exercise of reasonable care by the vessel under the circumstances. The vessel will not be charge-

5. 82 S.Ct. 780, 7 L.Ed.2d 798.

6. 74 S.Ct. 601, 98 L.Ed.2d 798.

7. 84 S.Ct. 748, 11 L.Ed.2d 732.

able with the negligence of the stevedore or employees of the stevedore.

Under this standard, as adopted by the Committee, there will, of course, be disputes as to whether the vessel was negligent in a particular case. Such issues can only be resolved through the application of accepted principles of tort law and the ordinary process of litigation—just as they are in cases involving alleged negligence by land-based third parties. The Committee intends that on the one hand an employee injured on board a vessel shall be in no less favorable position vis a vis his rights against the vessel as a third party than is an employee who is injured on land, and on the other hand, that the vessel shall not be liable as a third party unless it is proven to have acted or have failed to act in a negligent manner such as would render a land-based third party in non-maritime pursuits liable under similar circumstances.

The Committee also believes that the doctrine of the *Ryan* case, which permits the vessel to recover the damages for which it is liable to an injured worker where it can show that the stevedore breaches an express or implied warranty of workmanlike performance is no longer appropriate if the vessel's liability is no longer to be absolute, as it essentially is under the seaworthiness doctrine. Since the vessel's liability is to be based on its own negligence, and the vessel will no longer be liable under the seaworthiness doctrine for injuries which are really the fault of the stevedore, there is no longer any necessity for permitting the vessel to recover the damages for which it is liable to the injured worker from the stevedore or other employer of the worker.

Furthermore, unless such hold-harmless, indemnity or contribution agreements are prohibited as a matter of

public policy, vessels by their superior economic strength could circumvent and nullify the provisions of Section 5 of the Act by requiring indemnification from a covered employer for employee injuries.

Accordingly, the bill expressly prohibits such recovery, whether based on an implied or express warranty. It is the Committee's intention to prohibit such recovery under any theory including, without limitation, theories based on contract or tort.

Under the proposed amendments the vessel may not by contractual agreement or otherwise require the employer to indemnify it, in whole or in part, for such damages.

The Committee has also recognized the need for special provisions to deal with a case where a longshoreman or ship builder or repairman is employed directly by the vessel. In such case, notwithstanding the fact that the vessel is the employer, the Supreme Court, in *Reed v. S.S. Yaka*, 373 U.S. 410[8] (1963) and *Jackson v. Lykes Bros. Steamship Co.*, 386 U.S. 371[9] (1967), held that the unseaworthiness remedy is available to the injured employee. The Committee believes that the rights of an injured longshoreman or ship builder or repairman should not depend on whether he was employed directly by the vessel or by an independent contractor. Accordingly, the bill provides in the case of a longshoreman who is employed directly by the vessel there will be no action for damages if the injury was caused by the negligence of persons engaged in performing longshoring services. Similar provisions are applicable to ship building or repair

8. 83 S.Ct. 1349, 10 L.Ed.2d 448.

9. 87 S.Ct. 1419, 18 L.Ed.2d 488.

employees employed directly by the vessel. The Committee's intent is that the same principles should apply in determining liability of the vessel which employs its own longshoremen or ship builders or repairmen as apply when an independent contractor employs such persons.

Finally, the Committee does not intend that the negligence remedy auhorized in the bill shall be applied differently in different ports depending on the law of the State in which the port may be located. The Committee intends that legal questions which may arise in actions brought under these provisions of the law shall be determined as a matter of Federal law. In that connection, the Committee intends that the admiralty concept of comparative negligence, rather than the common law rule as to contributory negligence, shall apply in cases where the injured employee's own negligence may have contributed to causing the injury. Also, the Committee intends that the admiralty rule which precludes the defense of "assumption of risk" in an action by an injured employee shall be applicable.

Finally, the Committee wishes to emphasize that nothing in this bill is intended to relieve any vessels or any other persons from their obligations and duties under the Occupational Safety and Health Act of 1970. The Committee recognizes that progress has been made in reducing injuries in the longshore industry, but longshoring remains one of the most hazardous types of occupations. The Committee expects to see further progress in reducing injuries and stands ready to immediately re-examine the whole third party suit question if it appears that the changes made in present law by this bill have affected progress in improving occupational health and safety.

ADDENDUM B

Alabama:	*Crawford, Johnson & Co., Inc. v. Duffner*, 279 Ala. 678, 189 So.2d 474 (1966).
Arizona:	*Sherman v. Arno*, 94 Ariz. 284, 383 P.2d 741 (1963).
Arkansas:	*Dunn v. Brown & Root, Inc.*, 455 F.2d 717 (8 Cir. 1972).
	Gordon v. Matson, 246 Ark. 533, 439 S.W.2d 627 (1969).
Colorado:	*J & K Construction Co. v. Molton*, 154 Colo. 214, 390 P.2d 68 (1964).
Connecticut:	*Christiano v. Cunningham-Limp, Inc.*, 29 Conn. Supp. 361, 288 A.2d 448 (1971).
Delaware:	*Seeney v. Dover Country Club Apartments, Inc.*, 318 A.2d 619 (Del. Super. Ct. 1974).
	Hamm v. Ramunno, 281 A.2d 601 (Del. 1971).
Florida:	*Hickory House, Inc. v. Brown*, 77 So.2d 249 (Fla. 1955).
Georgia:	*Hodge v. United States*, 310 F.Supp. 1090 (M.D. Ga. 1969), *aff'd. per curiam and opinion adopted*, 424 F.2d 545 (5 Cir. 1970).
Hawaii:	*Pickard v. City & County of Honolulu*, 51 Haw. 134, 452 P.2d 445 (1969).
Illinois:	*Foster v. National Starch & Chemical Co.*, 500 F.2d 81 (7 Cir. 1974).
Indiana:	*Dismore v. Aetna Casualty & Surety Co.*, 338 F.2d 568 (7 Cir. 1964).
Iowa:	*Clinton Foods, Inc. v. Youngs*, 266 F.2d 116 (8 Cir. 1959), *cert. denied*, 361 U.S. 828.
Kansas:	*Graham v. Loper Electric Co., Inc.*, 389 P.2d 750 (Kan. 1964).
Kentucky:	*Olds v. Pennsalt Chemicals Corp.*, 432 F.2d 1033 (6 Cir. 1970), *cert. denied*, 401 U.S. 1010.
Louisiana:	*McIlwain v. Placid Oil Company*, 472 F.2d 248 (5 Cir. 1973).
Maine:	*Stanley v. United States*, 476 F.2d 606 (1 Cir. 1973).
	Levesque v. Fraser Paper, Ltd., 159 Me. 131, 189 A.2d 375 (1963).
Maryland:	*Bauman v. Woodfield*, 244 Md. 207, 223 A.2d 364 (1966).
	Le Vonas v. Acme Paper Board Co., 184 Md. 16, 40 Atl.2d 43 (1944).
Massachusetts:	*Barrett v. Foster-Grant Co., Inc.*, 450 F.2d 1146 (1 Cir. 1971).

Minnesota:	*Rausch v. Julius B. Nelson & Sons, Inc.*, 149 N.W.2d 1 (Minn. 1967).
Mississippi:	*Ingall Shipbuilding Corp. v. McDougald*, 228 So. 2d 365 (Miss. 1969).
	Mississippi Power Company v. Brooks, 309 So. 2d 863 (Miss. 1975).
	Market Insurance Company v. Killion, 415 F.2d 459 (5 Cir. 1969).
Missouri:	*Vest v. National Lead Company*, 469 F.2d 256 (8 Cir. 1972).
	Hunt v. Laclede Gas Company, 406 S.W.2d 33 (Mo. 1966).
Montana:	*Wells v. Stanley J. Thill & Associates, Inc.*, 452 P.2d 1015 (Mont. 1969).
Nebraska:	*Dorman v. The United States*, 268 F.Supp. 249 (D. Neb. 1967).
	Laaker v. Hartman, 186 Neb. 774, 186 N.W.2d 494 (1971).
New Hampshire:	*Maclean v. Parkwood, Inc.*, 247 F.Supp. 188 (D.C. N.H. 1965), *aff'd*, 354 F.2d 770 (1 Cir. 1966).
New Mexico:	*Madrid v. Mine Safety Appliance Co.*, 486 F.2d 856 (10 Cir. 1973).
	Mabrey v. Mobile Oil Corp., 505 P.2d 865, *cert. denied*, 84 N.M. 512, 505 P.2d 855 (1972).
New York:	*Schwartz v. United States*, 229 F.Supp. 485 (N.D. N.Y. 1962).
North Carolina:	*Spivey v. The Babcock & Wilcox Co.*, 264 N.C. 387, 141 S.E.2d 808 (1965).
	Carey v. United States, 183 F.Supp. 727 (N.D. N.C. 1960).
Oklahoma:	*Hatley v. Mobil Pipeline Co.*, 512 P.2d 182 (Okla. 1973).
Oregon:	Controlled by state statute which has been held inapplicable to injuries arising under 1972 Amendments to the Longshoremen's Act. *Birrer v. Flota Mercante Grancolombiana*, 386 F.Supp. 1105, 1975 A.M.C. 593 (D. Ore. 1974).
Pennsylvania:	*Fisher v. United States*, 441 F.2d 1288 (3 Cir. 1971).
	Moore v. Sylvania Electric Products, Inc., 454 F.2d 81 (3 Cir. 1972).
	Hader v. Coplay Cement Manufacturing Company, 410 Penn. 139, 189 A.2d 271 (1963).
	Brletich v. United States Steel Corp., 445 Penn. 525, 285 A.2d 133 (1971).
	Crane v. I.T.E. Circuit Breaker Co., 443 Penn. 442, 278 A.2d 362 (1971).

Rhode Island:	*Molinari v. Sinclair Refining Co.*, 111 R.I. 490, 304 A.2d 651 (1973).
South Carolina:	*Honea v. West Virginia Pulp & Paper Co.*, 380 F.2d 704 (4 Cir. 1967).
Tennessee:	*Dempster Bros., Inc. v. Duncan*, 61 Tenn. 88, 452 S.W.2d 902 (1969).
Texas:	*Shell Chemical Co. v. Lamb*, 493 S.W.2d 742 (Tex. 1973).
	Delhi-Taylor Oil Corporation v. Henry, 416 S.W.2d 390 (Tex. 1967).
Utah:	*Texaco, Inc. v. Pruitt*, 396 F.2d 237 (10 Cir. 1968).
Virginia:	*Trimyer v. Norfolk Tallow Co.*, 192 Va. 776, 66 S.E.2d 441 (1951).
Washington:	*Epperly v. City of Seattle*, 65 Wash.2d 777, 399 P.2d 591 (1965).
Wisconsin:	Controlled by statute.

ADDENDUM C

Alabama:	*Crawford, Johnson & Co., Inc. v. Duffner,* 279 Ala. 678, 189 So.2d 474 (1966).
Alaska:	*Parks v. Atkinson,* 19 Ariz. App. 111, 505 P.2d 279 (1973).
Arizona:	*DeVille v. Shell Oil Co.,* 366 F.2d 123 (9 Cir. 1966).
	Hobbs v. Mobile Oil Corp., 445 P.2d 933 (Alaska 1968).
Arkansas:	*Dunn v. Brown & Root, Inc.,* 455 F.2d 717 (8 Cir. 1972).
	Gordon v. Matson, 246 Ark. 533, 439 S.W.2d 627 (1969).
Connecticut:	*Darling v. Burrone Bros., Inc.,* 162 Conn. 187, 292 A.2d 912 (1972).
Delaware:	*Seeney v. Dover Country Club Apartments, Inc.,* 318 A.2d 619 (Del. Super. Ct. 1974).
	Yates v. United States, 365 F.2d 663 (4 Cir. 1966).
Florida:	*Florida Power & Light Co. v. Price,* 170 So.2d 293 (Fla. 1964).
	City of Mount Dora v. Voorhees, 115 So.2d 586 (2d C.A. Fla. 1959).
Georgia:	*Hodge v. United States,* 310 F.Supp. 1090 (M.D. Ga. 1969), *aff'd. per curiam and opinion adopted,* 424 F.2d 545 (5 Cir. 1970).
Idaho:	*Gates v. Pickett & Nelson Construction Co.,* 432 P.2d 780 (Idaho 1967).
Illinois:	*Foster v. National Starch & Chemical Co.,* 500 F.2d 81 (7 Cir. 1974).
Indiana:	*Wolfe v. Bethlehem Steel Corporation,* 460 F.2d 675 (7 Cir. 1972).
Kentucky:	*Olds v. Pennsalt Chemicals Corp.,* 432 F.2d 1033 (6 Cir. 1970), *cert. denied,* 401 U.S. 1010.
Maryland:	*Le Vonas v. Acme Paper Board Co.,* 184 Md. 16, 40 Atl.2d 43 (1944).
Massachusetts:	*Barrett v. Fosier-Grant Co., Inc.,* 450 F.2d 1146 (1 Cir. 1971).
Minnesota:	*Rausch v. Julius B. Nelson & Sons, Inc.,* 149 N.W.2d 1 (Minn. 1967).
Mississippi:	*Mississippi Power Company v. Brooks,* 309 So. 2d 863 (Miss. 1975).
	Market Insurance Company v. Killion, 415 F.2d 459 (5 Cir. 1969).

Montana:	*West v. Morrison-Knudsen Company, Inc.*, 451 F.2d 493 (9 Cir. 1971).
	Wells v. Stanley J. Thill & Associates, Inc., 452 P.2d 1015 (Mont. 1969).
Nebraska:	*Dorman v. The United States*, 268 F.Supp. 249 (D. Neb. 1967).
	Hand v. Rorick Construction Company, 190 Neb. 191, 206 N.W.2d 835 (1973).
New Jersey:	*Vecchio v. Anheuser-Busch, Inc.*, 328 F.2d 714 (2 Cir. 1964), *cert. denied*, 379 U.S. 831.
New York:	*Wallach v. United States*, 291 F.2d 69 (2 Cir. 1961), *cert. dism'd*, 368 U.S. 892, *cert. denied*, 368 U.S. 935.
	Lipka v. United States, 369 F.2d 288 (2 Cir. 1966), *cert. denied*, 387 U.S. 935.
Oklahoma:	*Hatley v. Mobil Pipeline Co.*, 512 P.2d 182 (Okla. 1973).
Oregon:	Controlled by state statute which has been held inapplicable to injuries arising under 1972 Amendments to the Longshoremen's Act. *Birrer v. Flota Mercante Grancolombiana*, 386 F.Supp. 1105, 1975 A.M.C. 593 (D. Ore. 1974).
Pennsylvania:	*Fisher v. United States*, 441 F.2d 1288 (3 Cir. 1971).
	Moore v. Sylvania Electric Products, Inc., 454 F.2d 81 (3 Cir. 1972).
	Hader v. Coplay Cement Manufacturing Company, 410 Penn. 139, 189 A.2d 271 (1963).
	Brletich v. United States Steel Corp., 445 Penn. 525, 285 A.2d 133 (1971).
	Crane v. I.T.E. Circuit Breaker Co., 443 Penn. 442, 278 A.2d 362 (1971).
Texas:	*Shell Chemical Co. v. Lamb*, 493 S.W.2d 742 (Tex. 1973).
	Kull v. Mid-America Pipeline Co., 476 F.2d 271 (5 Cir. 1973).
Utah:	*Texaco, Inc. v. Pruitt*, 396 F.2d 237 (10 Cir. 1968).
Washington:	*Epperly v. City of Seattle*, 65 Wash.2d 777, 399 P.2d 591 (1965).
Wisconsin:	Controlled by statute.

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